

FCC MAIL SECTION

Federal Communications Commission

DA 98-1381

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 97-246
Table of Allotments,)	RM-9205
FM Broadcast Stations.)	RM-9250
(Walla Walla and Pullman, Washington,)	
and Hermiston, Oregon) ¹)	

REPORT AND ORDER

(Proceeding Terminated)

Adopted: July 8, 1998;

Released: July 17, 1998

By the Chief, Allocations Branch:

1. At the request of Mark Jacky Broadcasting ("petitioner"), licensee of Station KUJ-FM, Channel 256C3, Walla Walla, Washington, the Commission has before it the Notice of Proposed Rule Making and Order to Show Cause, 12 FCC Rcd 21774 (1997), proposing the substitution of Channel 256C2 for Channel 256C3 at Walla Walla, and the modification of Station KUJ-FM's license accordingly (RM-9205).² To accommodate the upgrade, petitioner also proposes the substitution of Channel 258A for Channel 257A at Hermiston, Oregon, and the modification of Station KQFM(FM)'s license accordingly. Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if allotted. Comments and a counterproposal were filed by Palouse Country, Inc. ("Palouse"), licensee of Station KZZL-FM, Channel 258C1, Pullman, Washington, proposing the substitution of Channel 258C for Channel 258C1 at Pullman and the modification of Station KZZL-FM's license accordingly (RM-9250).³ Petitioner filed reply comments and a request for expedited action.

2. Without conceding the merits of the Palouse proposal to allot Channel 258C at Pullman, Washington, petitioner in its reply comments, proposes the substitution of Channel 263A for

¹The community of Pullman, Washington, has been added to the caption.

²Petitioner's application (BTCH-971107GI) for transfer of control of Station KUJ-FM from Mark Jacky Broadcasting to Cheryl Hodgins was granted on December 12, 1997. Also, Station KUJ-FM's application for license (BHL-971124KJ) for Channel 256C3 at Walla Walla, Washington, was granted on January 6, 1998.

³The counterproposal was placed on Public Notice on April 3, 1998, Report No. 2266 (RM-9250).

Channel 257A at Hermiston, Oregon, to accommodate the Walla Walla upgrade and to eliminate the mutual exclusivity between the two proposals. Petitioner asserts that the allotment of Channel 263A at Hermiston in lieu of Channel 258A as proposed in the Notice, would enable both parties to effectuate their respective upgrades.

3. Conflicting proposals are comparatively considered under the guidelines set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982).⁴ However, in this situation, an alternate Class A channel at Hermiston, Oregon, has been found to accommodate the Walla Walla upgrade that resolves the conflict between the two competing proposals. As such, a comparative analysis is not necessary. See Lawton, Oklahoma, 4 FCC Rcd 1807 (1989). To this end, we believe that the public interest would be served by substituting Channel 256C2 for Channel 256C3 at Wall Walla, Washington, since it would enable Station KUI-FM to expand its service area. In addition, we will substitute Channel 258C for Channel 258C1 at Pullman, Washington, since it would also enable Station KZZL-FM to expand its service area.

Technical Summary

4. An engineering analysis has determined that Channel 256C2 can be allotted to Walla Walla in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site.⁵ To accommodate the upgrade, Channel 263A can be allotted to Hermiston at Station KQFM's presently licensed site.⁶ Additionally, Channel 258C can be allotted to Pullman without the imposition of a site restriction at Station KZZL-FM's requested site.⁷ Since Pullman is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. In accordance with Section 1.420(g)(3) of the Commission's Rules, we will modify Station KUI-FM's license to specify operation on Channel 256C2 at Walla Walla, Washington; modify Station KQFM(FM)'s license to specify operation on Channel 263A at Hermiston, Oregon; and modify Station KZZL-FM's license to specify operation on Channel 258C at Pullman, Washington.

5. Whenever an existing station is ordered to switch frequency in order to accommodate a new allotment, the Commission requires that the proponent of the new allotment make a commitment to reimburse the affected station for the costs incurred in changing frequency. See

⁴The allotment priorities are (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to priorities (2) and (3).

⁵ The coordinates for Channel 256C2 at Walla Walla are North Latitude 45-59-38 and West Longitude 118-10-47.

⁶The coordinates for Channel 263A at Hermiston are North Latitude 45-51-57 and West Longitude 119-18-45.

⁷The coordinates for Channel 258C at Pullman are North Latitude 46-40-29 and West Longitude 116-58-19.

Circleville and Columbus, Ohio, 8 FCC 2d 159 (1967) Accordingly, Station KUJ-FM has stated its willingness to reimburse Westend Radio, L.L.C., licensee of Station KQFM(FM), Hermiston, Oregon, for reasonable costs incurred in changing to Channel 263A .

6. We issued an Order to Show Cause to Westend Radio, L.L.C., the licensee of Station KQFM(FM), to demonstrate why its authorization should not be modified to specify operation on Channel 258A in lieu of Channel 257A, as originally requested by petitioner. The licensee of Station KQFM(FM) filed no response as to why its license should not be modified. Accordingly, pursuant to Section 1.87 of the Commission's Rules, it is deemed to have consented to the channel change.

7. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 31, 1998, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Walla Walla, Washington	227C1, 239C, 246C, 256C2, 264C3, 265A
Hermiston, Oregon	263A
Pullman, Washington	249A 258C, 282C1

8. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Mark Jacky Broadcasting, Station KUJ-FM, Walla Walla, Washington, IS MODIFIED to specify operation on Channel 256C2 in lieu of Channel 256C3, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

9. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Westend Radio, L.L.C. for Station KQFM(FM), Hermiston, Oregon, IS MODIFIED to specify operation on Channel 263A in lieu of Channel 257A, subject to the following conditions:

- (a) Nothing contained herein shall be construed as authorizing any change in Station KQFM(FM)'s license, BLH-870721KA, except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).
- (b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-870721KA, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

10. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Palouse Country, Inc., Station KZZL-FM, Pullman, Washington, IS MODIFIED to specify operation on Channel 258C, in lieu of Channel 258C1, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

11. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, **if the request is granted**, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Mark Jacky Broadcasting, licensee of Station KQFM(FM), and Palouse Country, Inc., licensee of Station KZZL-FM, are required to submit a rule making fee in addition to the fee required for the application to effect their upgrades.

12. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the following:

Westend Radio, L.L.C.
2019 Court Avenue
Baker City, Oregon 97814
(Licensee of Station KQFM(FM))

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau